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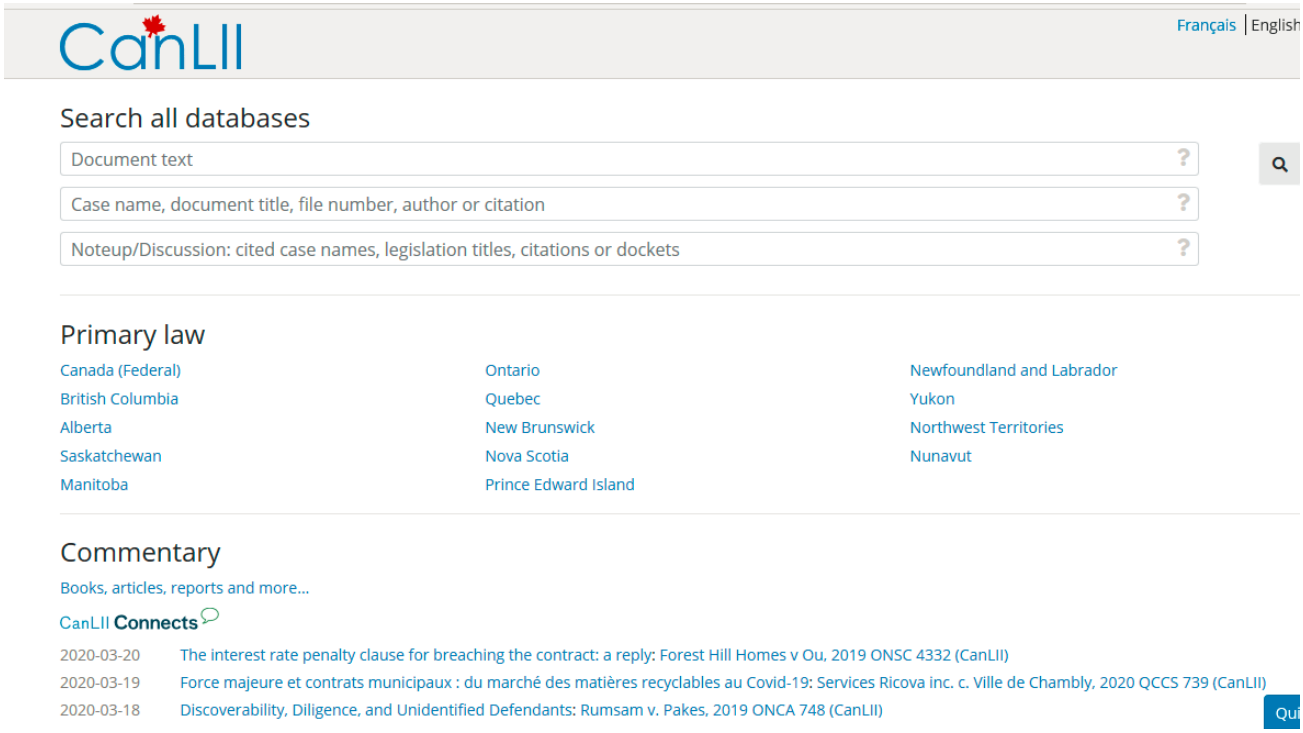
MARCH 20, 2020 BY RONNIE

Bit Of History, NGOs Trying To Open Canada's Borders For Decades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2020-03-18 Discoverability, Diligence, and Unidentified Defendants: Rumsam v. Pakes, 2019 ONCA 748 (CanLII)

It should worry Canadians greatly when there is a sustained effort to undermine and erode our borders. The overwhelming majority of people don't know how far back this goes. Although efforts predate these cases, this is where we will start.

On the first attempt, the Canadian Council of Churches went to court to try to get certain new legislation thrown out. This legislation would have made it harder for people to enter Canada from the U.S. and claim asylum. It went to the Supreme Court, but ultimately, it

was ruled the group did not have public interest standing.

Court History Over The Years

Again, many more attempts have been made in recent decades to erase borders, but this article will only focus on a few of them.

FIRST ATTEMPT: KILL "SAFE COUNTRY" DESIGNATION
(a) Federal Court, Trial Division, Rouleau J., [1989] 3 F.C. 3

(b) Canadian Council of Churches v. Canada,
Federal Court of Appeal, [1990] 2 F.C. 534

(c) Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236
1992.SCC.Rules.No.Standing

SECOND ATTEMPT: KILL CANADA/US S3CA
(a) 2008 ruling S3CA has no effect
Docket: IMM-7818-05
S3CA Provisions Struck Down

(b) The 2008 ruling is overturned on appeal
Canadian Council for Refugees v. Canada, 2008 FCA 229
Appeal granted, S3CA restored

THIRD ATTEMPT: TORONTO CASES TO STRIKE S3CA
(a) 2017, Prothonotary Milczynski considers consolidation
IMM-2229-17, IMM-2977-17, IMM-775-17
Milczynski Considers Consolidation

(b) 2017, CJ Crampton transfers cases to J. Diner
Crampton Transfers Consolidated Cases

(c) 2017, Justice Diner grants public interest standing

Citation: 2017 FC 1131

Amnesty Int'l, CDN Councils of Churches, Refugees

(d) 2018, Justice Diner grants consolidation of 3 cases

Citation: 2018 FC 396

Cases to be consolidated

(e) 2018, Justice Diner allows more witnesses

Citation: 2018 FC 829

2018.Diner.Calling.More.Witnesses

(f) 2019, Justice McDonald says no more witnesses

Citation: 2019 FC 418

2019.McDonald.No.More.Intervenors

1992: SCC Rules No Standing

CanLII
Home › Canada (Federal) › Supreme Court of Canada › 1992 CanLII 116 (SCC)
Français | English
Canadian Council Of Churches v Canada 1990 2 F.C. 534 1 of 162
Canadian Council of Churches v. Canada (Minister of Employment and Immigration), 1992 CanLII 116 (SCC), [1992] 1 SCR 236
Document
History (0)
Cited documents (11)
Cited by (419)
CanLII Connects (1)
Date: 1992-01-23
File number: 21946
Other citations: 49 FTR 160 — 88 DLR (4th) 193 — 132 NR 241 — 5 CPC (3d) 20 — 8 CRR (2d) 145 — 16 Imm LR (2d) 161 — 2 Admin LR (2d) 229 — JE 92-198 — [1992] SCJ No 5 (QL) — [1992] ACS no 5 — 31 ACWS (3d) 214
Citation: Canadian Council of Churches v. Canada (Minister of Employment and Immigration), 1992 CanLII 116 (SCC), [1992] 1 SCR 236, <http://canlii.ca/t/1fsg5>, retrieved on 2020-03-20
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Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236
The Canadian Council of Churches Appellant
v.

1992.SCC.Rules.No.Standing

The CanLII link is here.

Federal Court, Trial Division, Rouleau J., [1989] 3 F.C. 3

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Rouleau J. dismissed the application. His judgment reflects his concern that there might be no other reasonable, effective or practical manner to bring the constitutional question before the Court. He was particularly disturbed that refugee claimants might be faced with a 72-hour removal order. In his view, such an order would not leave sufficient time for an applicant to attempt either to stay the proceedings or to obtain an injunction restraining the implementation removal order.

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Federal Court of Appeal, [1990] 2 F.C. 534

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MacGuigan J.A. speaking for a unanimous Court allowed the appeal and set aside all but four aspects of the statement of claim.

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In his view the real issue was whether or not there was another reasonably effective or practical manner in which the issue could be brought before the Court. He thought there was. He observed that the statute was regulatory in nature and individuals subject to its scheme had, by means of judicial review, already challenged the same provisions impugned by the Council. Thus there was a reasonable and effective alternative manner in which the issue could properly be brought before the Court.

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He went on to consider in detail the allegations contained in the statement of the claim. He concluded that some were purely hypothetical, had no merit and failed to disclose any reasonable cause of action. He rejected other claims on the grounds that they did not raise a constitutional challenge and others on the basis that they raised issues that had already been resolved by recent decisions of the Federal Court of Appeal.

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He granted the Council standing on the following matters raised on the statement of claim

Without getting too much into the technical details, the Supreme Court had to decide whether the Canadian Council of Churches, an organization, should be granted public interest standing to strike down all or part of the immigration laws. Ultimately, the ruling was no.

Disposition of the Result

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In the result I would dismiss the appeal and allow the cross-appeal on the basis that the plaintiff does not satisfy the test for public interest standing. Both the dismissal of the appeal and the allowance of the cross-appeal are to be without costs.

Appeal dismissed and cross-appeal allowed.

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Solicitors for the appellant: Sack Goldblatt Mitchell, Toronto.

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Solicitor for the respondents: John C. Tait, Ottawa.

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Solicitors for the interveners The Coalition of Provincial Organizations of the Handicapped and The Quebec Multi Ethnic Association for the Integration of Handicapped People: Advocacy Resource Centre for the Handicapped, Toronto.

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Solicitors for the intervener League for Human Rights of B'Nai Brith Canada: David Matas, Winnipeg, and Dale Streiman and Kurz, Brampton.

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Solicitors for the interveners Women's Legal Education and Action (LEAF) and Canadian Disability Rights Council (CDRC): Tory, Tory, DesLauriers & Binnington, Toronto and Dulcie McCallum, Victoria.

Ultimately, the Supreme Court thought that a refugee, someone with actual standing (or something at stake) should be the one making the case.

Also worth noting, consider who some of the intervenors are in this case. A lot of people who want to make it easier to get into Canada.

2008: Safe Third Country Agreement, Parts Of IRPA Struck Out

Federal Court Cour fédérale

Date: 20080117

Docket: IMM-7818-05

2008 CanLII 91561 (FC)

Ottawa, Ontario, January 17, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

CANADIAN COUNCIL FOR REFUGEES
CANADIAN COUNCIL OF CHURCHES
AMNESTY INTERNATIONAL, and JOHN DOE

Applicants

and

HER MAJESTY THE QUEEN

S3CA, Parts of IRPA Struck

IT IS ORDERED THAT this application for judicial review is granted and the designation of the United States of America as a "safe third country" is quashed.

Yes, the Canada/U.S Safe Third Country Agreement was actually declared to have no legal effect. However, this is not the end of it, as we will soon see.

IT IS DECLARED THAT:

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1. Paragraphs 159.1 to 159.7 (inclusive) of the Immigration and Refugee Protection Regulations and the Safe Third Country Agreement between Canada and the United States of America are ultra vires and of no legal force and effect.
2. The Governor-in-Council acted unreasonably in concluding that the United States of America complied with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture.
3. The Governor-in-Council failed to ensure the continuing review of the designation

of the United States of America as a "safe third country" as required by paragraph 102(2) of the Immigration and Refugee Protection Act.
4. Paragraphs 159.1 to 159.7 (inclusive) of the Immigration and Refugee Protection Regulations and the operation of the Safe Third Country Agreement between Canada and the United States of America violate sections 7 and 15 of the Canadian Charter of Rights and Freedoms and are not justified under section 1 thereof.

THE FOLLOWING QUESTIONS are certified as serious questions of general importance:
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1. Are paragraphs 159.1 to 159.7 (inclusive) of the Immigration and Refugee Protection Regulations and the Safe Third Country Agreement between Canada and the United States of America ultra vires and of no legal force and effect?
2. What is the appropriate standard of review in respect of the Governor-in-Council's decision to designate the United States of America as a "safe third country" pursuant to s. 102 of the Immigration and Refugee Protection Act?
3. Does the designation of the United States of America as a "safe third country" alone or in combination with the ineligibility provision of clause 101(1)(e) of the Immigration and Refugee Protection Act violate sections 7 and 15 of the Canadian Charter of Rights and Freedoms and is such violation justified under section 1?

If the United States is not a safe country, then why do tens of thousands (if not hundreds of thousands) of people try to apply for asylum there every year?

The Safe Third Country Agreement was meant to prevent "asylum shopping" from taking place, but that is exactly what this ruling would have allowed.

Court Of Appeal Overturns Previous Ruling

CANADIAN COUNCIL FOR REFUGEES v. CANADA [2009]

A-37-08
2008 FCA 229

Her Majesty The Queen (*Appellant*)

v.

Canadian Council for Refugees, **Canadian Council of Churches**, **Amnesty International** and **John Doe** (*Respondents*)

INDEXED AS: CANADIAN COUNCIL FOR REFUGEES V. CANADA (F.C.A.)

Federal Court of Appeal, Richard C.J., Noël and Evans JJ.A.—Toronto, May 21; Ottawa, June 27, 2008.

Citizenship and Immigration — Exclusion and Removal — Removal of Refugees — Appeal from Federal Court decision declaring invalid Immigration and Refugee Protection Regulations, ss. 159.1-159.7, Agreement between the Government of Canada and the Government of the United States of America for Cooperation in the

The impugned Regulations and the Safe Third Country Agreement are not ultra vires the IRPA. Subsection 102(1) of the IRPA gives the GIC the power to promulgate regulations governing the treatment of refugee claims which may include provisions designating countries that comply with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture. This is a broad grant of authority intended to give effect to Parliament's expressed intent that responsibility for the consideration of refugee claims be shared with countries that are respectful of their Convention obligations and human rights. The factors to be considered before designating a country are expressly set out in subsection 102(2) of the IRPA. The applications Judge's misapprehended concern that the GIC would have the discretion to designate a country that does not comply with the Conventions led him to transform the statutory objective of designating countries "that comply" into a condition precedent.

The applications Judge adopted a hypothetical approach to the respondent organizations' Charter challenge, i.e. that a class of refugees would be treated a certain way if they were to present themselves at a Canadian land border port of entry. ***This approach went against the well-established principle that a Charter challenge cannot be mounted in the abstract***. There was no evidence that a refugee would have to bring a challenge from outside Canada. The respondent organizations' ability to bring the Charter challenge depended on John Doe. As the latter never presented himself at the border and therefore never requested a determination regarding his eligibility, there

was no factual basis upon which to assess the alleged Charter breaches. The applications Judge thus erred in entertaining the Charter challenge.

[14] On December 29, 2005, the respondents launched an application for leave and judicial review seeking a declaration that the designation of the U.S. under section 102 of the IRPA was ultra vires, that the ***GIC erred in concluding that the U.S. complied with Article 33 of the Refugee Convention and Article 3 of the Convention against Torture and further***, that the designation breached sections 7 and 15 of the Charter. For purposes of clarity, it is useful to set out in full the issues set out in the judicial review application filed before the Court:

[130] In short, a ***declaration of invalidity of the STCA Regulations is not required*** in order to ensure that they are not applied to claimants for protection at the land border in breach of either Canada's international obligations not to refoule, or the Charter.

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D. CONCLUSIONS

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[131] For these reasons I would allow the appeal

The Federal Court of Appeal ruled that the Lower Court considered a hypothetical scenario, and wrongly applied it to a Charter challenge. Put simply, Charter challenges are supposed to be ground in fact, and not "what if" situations. The ruling was overturned, and the Safe Third Country Agreement was restored.

2017-Present: Toronto Challenge

Federal Court Cour fédérale

Date: 20171019

Docket: IMM-775-17

Ottawa, Ontario, October 19, 2017

PRESENT: The Chief Justice

BETWEEN:

MOHAMMAD MAJD MAHER HOMSI

HALA MAHER HOMSI
KARAM MAHER HOMSI
REDA YASSIN AL NAHASS

Applicants

Chief Justice Paul Crampton transferred 3 related cases to Justice Diner for case management. This is the same CJ Crampton who ruled that private citizens wishing to oppose the destruction of the S3CA don't have standing.

Federal Court Cour fédérale

Date: 20171211

Docket: IMM-2977-17

Citation: 2017 FC 1131

Ottawa, Ontario, December 11, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

THE CANADIAN COUNCIL FOR REFUGEES
AMNESTY INTERNATIONAL
THE CANADIAN COUNCIL OF CHURCHES
ABC
DE [BY HER LITIGATION GUARDIAN ABC]
AND FG [BY HER LITIGATION GUARDIAN ABC]

Applicants

Justice Diner granted public interest standing to 3 NGOs: Amnesty International, Canadian

Council for Refugees, and Canadian Council of Churches.

Date: 20180412

Dockets: IMM-2977-17
IMM-2229-17
IMM-775-17

Citation: 2018 FC 396

2018 FC 396 (CanLII)

Toronto, Ontario, April 12, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION GUARDIAN ABC], FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD MAJD MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI, REDA YASSIN AL NAHASS AND NEDIRA MUSTEFA

Justice Diner order the 3 cases to be consolidated and tried together because of the overlapping issues.

Note: also see here, for decisions from the Federal Court in the matter above.

The case is still pending.

So Who Are These NGOs Doing All This?

Amnesty International

ai.01.certificate.of.continuance

ai.02.bylaws

ai.03.changes.in.directors

ai.04.notice.of.financials

B'nai Brith League For Human Rights

bblhr.01.bylaws

bblhr.02.change.registered.office
bblhr.03.amendments
bblhr.04.certificate.of.incorporation
bblhr.05.director.changes

B'nai Brith National Organization
bbno.01.director.changes
bbno.02.certificate.of.incorporation
bbno.03.change.registered.office
bbno.04.notice.of.financials

Bridges, Not Borders
Bridges Not Borders, Mainpage
Bridges Not Borders, About
Bridges Not Borders, Why They Cross
Bridges Not Borders, Media Page
Bridges Not Borders, Pro Asylum Shopping

Canadian Association Of Refugee Lawyers
carl.01.directors
carl.02.change.of.office
carl.03.bylaws.2015
carl.04.notice.of.return
carl.05.certificate.of.continuance

Canadian Council For Refugees
ccr.01.2019.director.changes
ccr.02.bylaws
ccr.03.bylaws.from.2014
ccr.04.certificate.of.continuance
ccr.05.annual.return

Plattsburgh Cares
Plattsburgh Cares Main Page
Plattsburgh Cares, Humanitarian Support

Solidarity Across Borders
Solidarity Across Borders' Homepage
SAB Supports Illegal Migrant Caravans
SAB Supports Sanctuary Cities For Illegals
SAB Calls To Open Up The Borders

These are of course not the only NGOs working to open up our borders (and other nations' borders as well), but it does at least provide some insight.

Also, see the above links in Section #1 for other articles published on these NGOs.

9. Look At The Bigger Picture

Last fall, the story made the news that a challenge would be coming to Toronto to the Safe Third Country Agreement.

However, the Canadian media left out important information. Shocking.

First, it didn't go into any detail on the groups lobbying for this. It wasn't just some helpless "asylum claimants", but an organized effort to help erase Canada's border with the U.S.

Second, the full extent of the NGO meddling is not mentioned. True, some media ***DO*** reference the 2007 case, but not further. It doesn't provide a complete picture of what is going on. Nor does it mention how these groups are pushing similar initiatives elsewhere. Amnesty International, for example, claims to have 7 million members pushing to bring more migrants (primarily) to the West. The Canadian Council for Refugees, as another example, spends considerable time and effort lobbying our Parliament for more refugee friendly laws.

Third, there seems little concern for the Canadian who would have their safety and sovereignty eroded should this pass. Instead, the focus is always on people coming to Canada and what their needs are.

This is lawfare: using our courts and legal system to open our borders.

BORDERS (CANADA), CANADA, CANADIAN DECISIONS, GLOBALISM, HUMAN RIGHTS, IDENTITY/RELIGION, IMMIGRATION (CANADA), LAWFARE, LOBBYING, NGO/CS, TRAFFICKING, SMUGGLING, CHILD EXPLOITATION